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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

By

DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CARLOS RIOS,
CDCR #E-52249,

Civil No. 13cv2455 WQH (JMA)

Plaintiff,

vs.
D. PARAMO, R. BLAHNICK;
K. BALAKIAN; B. CROTTI;
B. MILLUM; A. HERNANDEZ;
R. OLSON; J. RAMIREZ,

**ORDER DIRECTING U.S.
MARSHAL TO EFFECT
SERVICE OF AMENDED
COMPLAINT PURSUANT
TO FED.R.CIV.P. 4(c)(3)
AND 28 U.S.C. § 1915(d)**

Defendants.

I. PROCEDURAL HISTORY

Carlos Rios (“Plaintiff”), a state prisoner proceeding pro se and currently incarcerated at the Richard J. Donovan Correctional Facility, has initiated this civil rights action pursuant to 42 U.S.C. § 1983.

On March 25, 2014, the Court granted Plaintiff leave to proceed *in forma pauperis* (“IFP”), but dismissed his Complaint sua sponte for failing to state a claim upon which relief could be granted pursuant to 28 U.S.C. §§ 1915(e)(2) & 1915A(b). *See* Doc. No. 5 at 10-11. Plaintiff was granted leave to amend in order to correct the deficiencies of pleading identified in the Court’s Order. *Id.*

1 Plaintiff requested and was granted an extension of time in which to amend, and
 2 he has since filed an Amended Complaint (Doc. No. 9).

3 **II. SCREENING PURSUANT TO 28 U.S.C. §§ 1915(e)(2) & 1915A(b)**

4 As Plaintiff is aware, the Prison Litigation Reform Act (“PLRA”) requires the
 5 Court to review complaints filed by all persons proceeding IFP and by those, like
 6 Plaintiff, who are “incarcerated or detained in any facility [and] accused of, sentenced
 7 for, or adjudicated delinquent for, violations of criminal law or the terms or conditions
 8 of parole, probation, pretrial release, or diversionary program,” “as soon as practicable
 9 after docketing.” *See* 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Under these statutes, the
 10 Court must sua sponte dismiss complaints, or any portions thereof, which are frivolous,
 11 malicious, fail to state a claim, or which seek damages from defendants who are immune.
 12 *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A; *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th
 13 Cir. 2000) (en banc) (§ 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir.
 14 2010) (discussing 28 U.S.C. § 1915A(b)).

15 “[W]hen determining whether a complaint states a claim, a court must accept as
 16 true all allegations of material fact and must construe those facts in the light most
 17 favorable to the plaintiff.” *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000); *see also*
 18 *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (noting that § 1915(e)(2)
 19 “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”). In addition, courts
 20 “have an obligation where the petitioner is pro se, particularly in civil rights cases, to
 21 construe the pleadings liberally and to afford the petitioner the benefit of any doubt.”
 22 *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (citing *Bretz v. Kelman*, 773
 23 F.2d 1026, 1027 n.1 (9th Cir. 1985)). The court may not, however, “supply essential
 24 elements of claims that were not initially pled.” *Ivey v. Board of Regents of the*
 25 *University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

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1 As currently pleaded, the Court finds the allegations in Plaintiff's Amended
 2 Complaint sufficient to survive the sua sponte screening required by 28 U.S.C.
 3 §§ 1915(e)(2) and 1915A(b).¹ *See Lopez*, 203 F.3d at 1126-27. Accordingly, the Court
 4 will order U.S. Marshal service on Plaintiff's behalf. *See* 28 U.S.C. § 1915(d) ("The
 5 officers of the court shall issue and serve all process, and perform all duties in [IFP]
 6 cases."); FED.R.CIV.P. 4(c)(3) ("[T]he court may order that service be made by a United
 7 States marshal or deputy marshal . . . if the plaintiff is authorized to proceed *in forma
 pauperis* under 28 U.S.C. § 1915.").

9 **III. CONCLUSION AND ORDER**

10 Good cause appearing, **IT IS HEREBY ORDERED** that:

11 1. The Clerk shall issue a summons as to Plaintiff's Amended Complaint (Doc.
 12 No. 9) upon Defendants and shall forward it to Plaintiff along with a blank U.S. Marshal
 13 Form 285 for each Defendant. In addition, the Clerk is directed to provide Plaintiff with
 14 a certified copy of the Court's March 25, 2014 Order granting Plaintiff leave to proceed
 15 IFP (Doc. No. 5), a certified copy of his Amended Complaint (Doc. No. 9), and the
 16 summons so that he may serve each named Defendant. Upon receipt of this "IFP
 17 Package," Plaintiff is directed to complete the Form 285s as completely and accurately
 18 as possible, and to return them to the United States Marshal according to the instructions
 19 provided by the Clerk in the letter accompanying his IFP package. Upon receipt, the
 20 U.S. Marshal will serve a copy of Plaintiff's Amended Complaint and summons upon
 21 each Defendant as directed by Plaintiff on the USM Form 285s. All costs of service will
 22 be advanced by the United States. *See* 28 U.S.C. § 1915(d); FED.R.CIV.P. 4(c)(3).

23 2. Defendants are thereafter **ORDERED** to reply to Plaintiff's Amended
 24 Complaint within the time provided by the applicable provisions of Federal Rule of Civil
 25 Procedure 12(a). *See* 42 U.S.C. § 1997e(g)(2) (while a defendant may occasionally be

27 1 Plaintiff is cautioned that "the sua sponte screening and dismissal procedure is
 28 cumulative of, and not a substitute for, any subsequent Rule 12(b)(6) motion that [a
 defendant] may choose to bring." *Teahan v. Wilhelm*, 481 F. Supp. 2d 1115, 1119 (S.D.
 Cal. 2007).

1 permitted to “waive the right to reply to any action brought by a prisoner confined in any
2 jail, prison, or other correctional facility under section 1983,” once the Court has
3 conducted its sua sponte screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b),
4 and thus, has made a preliminary determination based on the face on the pleading alone
5 that Plaintiff has a “reasonable opportunity to prevail on the merits,” the defendant is
6 required to respond).

7 3. Plaintiff must serve upon Defendants or, if appearance has been entered by
8 counsel, upon Defendants’ counsel, a copy of every further pleading or other document
9 submitted for consideration by the Court. Plaintiff must include with the original paper
10 to be filed with the Clerk of the Court a certificate stating the manner in which a true and
11 correct copy of any document filed was served on Defendants, or counsel for Defendants,
12 and the date of such service. Any paper received by the Court which has not been filed
13 with the Clerk or which fails to include a Certificate of Service will be disregarded.

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DATED: 8/28/14


HON. WILLIAM Q. HAYES
United States District Judge

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